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U.S. BANKRUPTCY COURT
MARY A. SCHOTT, CLERK *me*

1 JOSEPH R ESQUIVEL JR,
2 LORI ESQUIVEL
3 6940 Surrey Ct.
4 Las Vegas, Nevada 89145
5 (702) 810-6627

6 **UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF NEVADA**

8 JOSEPH R ESQUIVEL JR, and
9 LORI ESQUIVEL aka LORI HERDA
10 *pro per*

11 Plaintiff,

12 Vs.

13 **BRIAN T. MOYNIHAN, and/or his**
14 **successor, individually, and in his**
15 **official capacity as PRES/CEO OF**
16 **BAC HOME LOANS SERVICING,**
17 **LP,**

) Case No: BS-09BK-29326

) DATE: Sept 28, 2010

) Time: 2:30 P.M

) **MOTION TO COMPEL**
) **DEFENDANTS' ATTORNEYS**
) **TO SUBMIT AN AFFIDAVIT**
) **TO THIS COURT**
) **STATING WHETHER OR NOT**
) **THEY ARE REPRESENTING**
) **THE HOLDER IN DUE COURSE**
) **AND THE CREDITOR**
) **IN THIS MATTER**
)
)
)

26 Assigned to Honorable
27 BRUCE A. MARKEIL

1
2 Plaintiff, JOSEPH R ESQUIVEL.JR, and LORI ESQUIVEL, *pro per*, pursuant to,
3 *inter alia*, Rule 1 of the F.R.Civ.P. hereby enters their Motion to Compel
4 Defendants' attorneys; **to submit to this Court an affidavit signed under penalty**
5 **of perjury by a party under the jurisdiction of this Court**, pursuant to, *inter alia*,
6 F.R.Civ.P. Rule 17(a) stipulating and admitting on and for the record: 1) whether or
7 not they are representing the Holder in Due Course and the Creditor in this matter;
8 2) are not in actuality acting as a debt collector in this matter

9 Furthermore, Compel Defendants' attorneys to state on and for the record,
10 what entity, if any, is the Holder in Due Course and the Creditor in this matter.

11 For clarification purposes, Plaintiff is **not** asking Defendants' attorneys what
12 entity is the Holder, or if they represent the Holder. Plaintiff has clearly stated they
13 are asking Defendants' attorneys to stipulate as to whether or not they represent the
14 Holder in Due Course and the Creditor in this matter and if Defendants' attorneys
15 are actually acting as a debt collector.

16 Also for clarification purposes, in this Motion, Defendants are defined as
17 Defendants and/or their successors and/or the corporation Defendants were and/or
18 are an officer of, during any aspect of any contingent that was in any way
19 responsible and/or involved with the non-judicial foreclosure and/or Deed of Trust
20 and/or this action. This definition is not cause to consider the Defendants'
21 corporation as a party to this suit as Plaintiff hereby reiterates that Defendants'
22 corporations were only used by Defendants' as part of a criminal conspiracy to
23 unlawfully divest Plaintiff of Plaintiff's lawfully owned real property.

24 **WHEREAS**, Defendants' attorneys have obfuscated facts and avoided
25 important issues and determining factors in this matter causing undue delay in
26 achieving a just, speedy and inexpensive resolution to this matter.

1 **WHEREAS**, Defendants' attorneys have repeatedly misrepresented facts
2 concerning Defendants' standing to confuse this Court by claiming Defendants are a
3 Holder without denying or proving Defendants are the Holder in Due Course.

4 **WHEREAS**, Defendants' attorneys have repeatedly misrepresented facts to
5 confuse this court concerning Defendants' standing by appearing as the Creditor
6 without denying or proving Defendants are the Creditor.

7 **WHEREAS**, there are no facts in evidence there was ever a risk of assets by
8 any Defendant and/or Defendants' corporation in the matter that led to the non-
9 judicial foreclosure, and ultimately this suit.

10 **WHEREAS**, Defendants' attorneys could not have lawfully commenced a
11 non-judicial foreclosure against Plaintiff in the State of Nevada unless Defendants
12 are and were at the time of the commencement the Holder in Due Course of the
13 Promissory Note that was integral to the Deed of Trust.

14 **WHEREAS**, Defendants' attorneys must, pursuant to Rule 17(a) ratify the
15 commencement of any proceeding when requested to do so by Plaintiff.

16 **WHEREAS**, this Court has the judicial discretion pursuant to Rule 1 to
17 Compel Defendants and Defendants' attorneys to assist this Court in the just,
18 speedy and inexpensive resolution to this matter.

19 **WHEREAS**, F.R.Civ.P. Rule 1 requires all parties to cooperate to secure the
20 just, speedy, and inexpensive determination of every action and proceeding.

21 **WHEREAS**, if Defendants are not the Holder in Due Course and the
22 Creditor, the Defendants' attorneys have violated N.R.S.. § 199.120 by making
23 inconsistent statements to different government agencies.

24 **WHEREAS**, the aforementioned stipulations and admissions by Defendants'
25 attorneys would achieve a just, speedy and inexpensive resolution to this matter
26 thereby saving the State's and this Court's valuable and limited resources.

27 **THEREFORE**, this Court should grant Plaintiff's Motion to Compel and
28 order Defendants' attorneys to submit affidavits under penalty of perjury declaring

1 on and for this Court's record: whether or not they represent the Holder in Due
2 Course and the Creditor in this matter; and whether or not the Defendants or their
3 attorneys are acting as debt collectors.

4 **VERIFIED STATEMENT**

5 The undersigned JOSEPH R ESQUIVEL.JR, *pro per*, a man, and a civilian,
6 The undersigned LORI ESQUIVEL , *pro per*, a woman, and a civilian ,herein
7 Plaintiffs, does solemnly declare and state as follows:

8 I am moving this Court to Compel Defendants for ratification of
9 commencement in furtherance of achieving a just, speedy and inexpensive
10 resolution to this matter pursuant to Rule 17(a) and in no way do I believe this
11 Motion to Compel will cause an undue financial burden or harass Defendants and/or
12 Defendants' attorneys in any way.

13 I believe there is good cause and foundation in law for this Motion to Compel
14 and absence of an affidavit by Defendants' attorneys as stipulated above will
15 negatively effect the pursuit of justice and waste the State's and this Court's
16 valuable and limited resources.

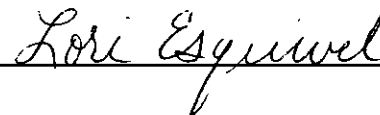
17
18 DATED: the 23rd day of August, in the year of Our Lord, 2010

19
20 BY:



agent

BY:



21
22 JOSEPH R ESQUIVEL.JR, *pro per*

LORI ESQUIVEL, *pro per*

23 Signed reserving all my rights at UCC 1-30

Signed reserving all my rights at UCC 1-308
24
25
26
27
28